

### **REMARKS**

Continued examination pursuant to 37 C.F.R. § 1.114 is requested on the basis of this submission pursuant to 37 C.F.R. § 1.111 and payment of the required fee. Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.114, are respectfully requested.

Claims 1 and 31 have been amended to recite that the concentration of nitroimidazole derivative in the preparation is between 1.5 and 10% and between 1.5 and 5% respectively, as described at least at page 41, lines 15-16 of the application.

#### **Rejections under 35 U.S.C. § 103**

Claims 1, 13, 14, and 31 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Goodman et al. (WO 98/27960) (hereinafter, the "Goodman PCT publication") in view of Fleischer (1999, abstract only), or Fleischer (1999) and Miller et al. (1980, abstract only).

The prior art fails to establish a proper prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.

The prior art fails to teach or suggest the preparation recited in the claims for use in a method as presently claimed. Therefore, the art fails to teach or suggest every element of the

claimed invention and cannot support a prima facie case of obviousness. Accordingly, withdrawal of the rejection is respectfully requested.

### CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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